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February 13, 2003

EX PARTE – Via Electronic Filing

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On February 13, 2003, Tom Koutsky of Z-Tel and I met with Commissioner Martin and Dan Gonzalez and separately with Jordan Goldstein. We discussed our views on the NARUC proposal. Those views are explained in more detail in the related *ex parte* letter we filed today.

In our meetings, we emphasized that carriers seeking to serve mass-market customers currently are impaired in all zones on account of the operational problems associated with manual hot cuts (and the high cost of manual hot cuts as well). Therefore, applying any presumption of impairment or non-impairment for these operational issues is inconsistent with the record in this proceeding. However, once operational impairment is relieved, carriers will continue to be impaired on account of a variety of other economic factors. Economic impairment consists of a host of factors that are discussed in previous submissions by Z-Tel in this proceeding, as well as Judge Bork's January 10, 2003 filing. We noted that those economic impairments likely will ease in different geographic zones on different schedules, and that geographic density zones (*e.g.*, urban, suburban, and rural) are one factor that is related to a showing of economic impairment.

We also emphasized that the Commission should supplement the NARUC framework with an impairment standard and urged it to adopt the "output" standard proposed in our Reply Comments and explained in detail in the declaration by George Ford attached to those Reply Comments.

Finally, in response to Commissioner Martin's concern that state "delisting" proceedings be completed expeditiously, we stated that we were not opposed to reasonable timelines under which state commissions should consider requests to "delist" network elements. We noted that in the proposed regulation we submitted on January 31, 2003, we balanced the procedural burden on state commissions

and competitors by providing that if an incumbent's request for "delisting" were denied, that incumbent would have to wait at least a year to file another such request. Z-Tel believes that if a burden of a deadline in these "delisting" proceedings is placed upon state commissions, it is reasonable for the Commission to help ensure that ILECs not flood state commissions with incomplete or unsubstantiated "delisting" petitions. A one-year ban on reapplication by the ILEC will help ensure that ILECs present complete, comprehensive and reasonable applications to state commissions. Other checks, such as the evidentiary showings described in Z-Tel's January 31, 2003 proposed rule, would also help in this regard.

In accordance with FCC rules, a copy of this letter is being filed in the above-captioned dockets.

Sincerely,

/s/

Christopher J. Wright
Counsel to Z-Tel Communications, Inc.